

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 15 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

JOSE JUAN LOPEZ-LARA,

Defendant - Appellant.

No. 05-50105

D.C. No. CR-03-01135-PA-01

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Argued and Submitted February 8, 2006
Pasadena, California

Before: PREGERSON, W. FLETCHER, and BYBEE, Circuit Judges.

After eight deportations, Lopez-Lara was convicted of illegal entry under 8 U.S.C. § 1326 and sentenced to seventy-seven months in prison. At trial, he filed a motion to compel reinstatement of his pre-indictment, fast-track plea offer, and

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

launched a collateral attack on his initial deportation proceedings. His claims are without merit.

Myra Sun, a public defender with ten years of experience, did not serve Lopez-Lara ineffectively when she advised him, before his indictment, that he would likely receive a sentence of seventy or seventy-seven months. Although Sun was unaware of a recent Seventh Circuit case permitting longer sentences in cases of multiple counts of illegal reentry, *see United States v. Bahena-Guifarro*, 324 F.3d 560 (7th Cir. 2003), ignorance of a recent case outside the jurisdiction hardly falls below an objective standard of reasonable professional performance. *Nunes v. Mueller*, 350 F.3d 1045, 1051 (9th Cir. 2003). Sun’s prediction was in line with current practice in the district, and it was just a prediction—we cannot require absolute accuracy. Furthermore, we are not persuaded that Lopez-Lara relied on Sun’s prediction in giving up the fast-track plea offer because he refused an offer of forty-eight months shortly after learning about her error. Lopez-Lara chose instead to pursue a collateral attack on his initial deportation order. Even if there was ineffective assistance in this case, Lopez-Lara cannot show that the “decision reached would reasonably likely have been different absent the errors.” *Strickland v. Washington*, 466 U.S. 688, 696 (1984).

Lopez-Lara's collateral attack on the underlying deportation order proved futile at trial. He failed to exhaust his appellate remedies, even though he consulted with counsel after the deportation hearing and was aware of the right to appeal. Unlike *United States v. Ubaldo-Figueroa*, 364 F.3d 1042, 1047 (9th Cir. 2004) and *United States v. Pallares-Galan*, 359 F.3d 1088, 1093 (9th Cir. 2004), no one induced Lopez-Lara to waive his appeal rights at the hearing. He was not deprived of judicial review and his deportation was not fundamentally unfair.

Even if Lopez-Lara could mount an effective due process challenge to his deportation procedures, he cannot show prejudice. *Ubaldo-Figueroa*, 364 F.3d at 1048. His extensive criminal behavior, unsuccessful rehabilitation, failure to maintain family ties, and lack of any meaningful employment history militate against any relief from deportation, and it is extremely unlikely that it would have been granted.

We AFFIRM the decision of the district court.